No. 240

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CLERK

Supreme Court of the United States

J. E. ROSE, JR., a Clerk in the Transportation Department; F. L. GALLOWAY, Division Clerk, Auditor Passenger Receipts; D. H. CRAIG, Chief Time Keeper, Auditor Disbursements Department; W. L. BEERY, Statistician, Freight Claim Department; and J. W. HARMON, Rate Clerk, Freight Traffic Department; et al,

Petitioners,

versus

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES, ET AL.,

Respondent.

PETITION FOR WRIT OF CERTIORARI AND BRIEF IN SUPPORT

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Dated July 31, 1950.

WILMINGTON PRINTING COMPANY

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Petitioners,

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BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES, ET AL.,

Respondent.

PETITION FOR WRIT OF CERTIORARI

To the Honorable Chief Justice and the Associate Justices of the Supreme Court of the United States:

J. E. Rose, Jr., a Clerk in the Transportation Department; F. L. Galloway, Division Clerk, Auditor Passenger Receipts; D. H. Craig, Chief Time Keeper, Auditor Disbursements Department; W. L. Beery, Statistician, Freight Claim Department; and J. F. Harmon, Rate Clerk, Freight Traffic Department; et al, respectfully petition that a Writ of Certiorari issue to review the judgment rendered in this case by the Circuit Court of Appeals of the Fourth Circuit, and in support of the petition respectfully show:

Jurisdiction

The judgment of the Circuit Court of Appeals of the Fourth Circuit was entered on the 10th day of May, 1950, and became effective as of that date.

The jurisdiction of this Court is invoked under Title 28, U. S. C. A., Section 1254, Sub-section 1, providing that cases in the Circuit Courts of Appeal may be reviewed by the Supreme Court by the following methods:

1. By writ of Certiorari granted upon the petition of any party to any civil or criminal case before or after rendition of judgment or decree herein.

The Writ is applied for within ninety days after the entry of the judgment requested to be reviewed, as prescribed by Title 28, U. S. C. A., Section 2101(c).

The judgment sought to be reviewed was rendered in a proceeding brought by the petitioners, in which the petitioners sought to intervene in a civil action instituted in the United States District Court for the Eastern District of North Carolina, by the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, et al, hereinafter called the Brotherhood, plaintiffs, against the Atlantic Coast Line Railroad Company, hereinafter called the Company, defendant, the petitioners contending, among other things, that the Brotherhood had no legal right to represent the petitioners as bargaining agents between themselves and their employer, the Company, for the reasons set out in the intervenors' complaint, which was filed with motion for leave to intervene. (App. P. 11.)

The United States District Court denied the petitioners' motion to be permitted to intervene in said cause and this judgment was affirmed on appeal by the Circuit Court of Appeals for the Fourth Circuit. The intervenors filed their complaint of intervention pursuant to Rule 24(c) and Rule 17(a), Federal Court.

Statement of Matter Involved

The petitioners herein constitute approximately 850 of the defendant Company's employees, and have been since 1921 a

separate craft or class, since which time they have been so recognized by the plaintiff Brotherhood and the defendant Company in contracts between the plaintiff Brotherhood and the defendant Company. The Class or Craft to which the petitioners belong, by a series of contracts between the Brotherhood and the Railroad Company, has been excepted from the agreement between the Brotherhood and the Railroad Company, the petitioners being known as the "Personal Office Forces", and the rules excepting these petitioners, and others similarly situated, from the several agreements between the Brotherhood and the Railroad Company were adopted in 1925, again in 1936 and in 1944, which latter is yet in force, and the particular positions now excepted are fully described as Exhibit A (see Exceptions and Scope Rule 1, App. P. 18).

During the year 1946, a dispute arose between the Brotherhood on the one hand, and the excepted employees on the other (the present petitioners), with the Brotherhood asserting the right to represent the excepted employees and the excepted employees disputing the right. Accordingly, when the Brotherhood requested the Mediation Board to investigate this dispute, it would seem that notice should have been given to the excepted employees (the present petitioners). It was not. The Board prepared a list of employees eligible to participate in the election as members of the craft or class of clerical, office, station and storehouse employees, resulting in 5,594 employees being declared eligible to vote. The approximately 850 employees, in whose behalf the petition to intervene was filed, were included in this number of 5,594 employees although this group, that is the petitioners as a group and as a class and craft, had been specifically excepted from 1922 up to and including 1944 in contracts made between the Brotherhood and the defendant Railroad Company, with respect to the employees classified as Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, which latter class

and craft admittedly is and was at the time of the institution of this action legally represented by the Brotherhood as their representative for collective bargaining with their employer, the Atlantic Coast Line Railroad Company.

The petitioners constitute:

1. Outside officers or agencies off the line of road and outside offices on the line of road, not connected with the Operating Department.

2. Employees assigned to road service where special training, experience and fitness are necessary.

3. Personal office forces.

The above named class or crafts have always been excepted from the rule known as the Scope Rule and have at all times been excepted from the several agreements between the Brotherhood and the Railroad Company. (App. Pages 16 and 17.)

Question Presented

Do a group of employees composing a different class or craft from those heretofore represented by the Brotherhood for the purpose of collective bargaining, have the right to intervene in a cause instituted by the Brotherhood against their employer for the purpose of asking the Court's affirmative help by granting a decree for the enforcement of a certificate of the Mediation Board under Section 2 (9th), Title 45, U. S. C. A., Section 152, Sub-section 9, which certificate of such Board requires the petitioners to accept the Brotherhood as its bargaining agent, when the petitioners do not desire the Brotherhood, or any other union, to act as their agent for the purpose of collective bargaining. The effect of the certificate is to include the petitioners as members of a class represented by the Brotherhood, to which class they do not wish to belong.

Reasons Relied On For Allowance of Writ

1. It is petitioners' contention that the Circuit Court of Appeals has decided an important question of federal law, which has not been but should be settled by this Court.

2. That the decision of the District Court and of the Circuit Court of Appeals violates the "due process" clause of the United States Constitution in that by declining to permit the petitioners to intervene and assert their legal rights, if any they have, the petitioners have been deprived of their day in court.

A supporting brief is annexed to this petition.

WHEREFORE, petitioners respectfully pray that a Writ of Certiorari issue to review said judgment of the Circuit Court of Appeals for the Fourth Circuit, and that the judgment of the Circuit Court be reversed, which affirmed the judgment of the District Court refusing the petitioners the right to intervene and establish their rights, if any they have, to decline to be represented by the Brotherhood as their agent to bargain collectively with their employer.

Respectfully submitted,

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Dated July 31, 1950.

Supreme Court of the United States

J. E. ROSE, JR., a Clerk in the Transportation Department; F. L. GALLOWAY, Division Clerk, Auditor Passenger Receipts; D. H. CRAIG, Chief Time Keeper, Auditor Disbursements Department; W. L. BEERY, Statistician, Freight Claim Department; and J. W. HARMON, Rate Clerk, Freight Traffic Department; et al,

Petitioners,

versus

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES, ET AL.,

Respondent.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

I. Opinion of the Court Below

The opinion of the Circuit Court of Appeals for the Fourth Circuit is reported in , and appears at Pages et seq. of the record. The opinion of the District Court appears in the Appendix, Pages 28 et seq., Record Page .....

II. Jurisdiction

The jurisdiction of this Court is invoked under Title 28, U. S. C. A., Section 1254(1).

III. Statement of the Case

The case is stated under the head, "Statement of Matter Involved", Page 2 of the Petition for the Writ. It is re-

spectfully requested that such statement be considered as being incorporated here.

IV. Question Presented

The question presented is stated under the same heading, Page 4 of the Petition, and it is respectfully requested that the question as there stated be considered as re-stated here.

V. Argument

The main action, in which these petitioners are now seeking to intervene, was brought by the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, et al, against the Atlantic Coast Line Railroad Company, to enforce a certificate of the Mediation Board, which certified that the Brotherhood, by virtue of an election held under the auspices of the Mediation Board, had become the bargaining agent of the petitioners, which as a class and craft had always been heretofore excluded and excepted from the Scope Rule, and who form an entirely separate and distinct class or craft from the class and craft admittedly represented by the Brotherhood, it having been made to appear that the petitioners never, individually or collectively, wished to be represented by this Brotherhood or by any other union for the purpose of collective bargaining or for any other purpose.

We call the attention of the Court to the fact that the main action brought by the Brotherhood against the Railroad is a class suit and is so specifically denominated in the Brotherhood's complaint in that section, (App. Pages 1-3) it being alleged in the petitioners' complaint in the petition to intervene that the petitioners did not belong to the class or crafts represented by the Brotherhood, and specifically enumerated and designated in the complaint filed by the Brotherhood in the main action; that, therefore, these petitioners are entitled to

intervene for the purpose of establishing this fact, and are entitled to their day in court for this purpose and to show that they are not adequately represented by the Brotherhood, and that they do not wish to be represented by the Brotherhood or any other union for the purpose of collective bargaining. The petitioners are a separate or particular class or craft of employees and for more than twenty-five years have been so designated and classified under three previous contracts between the Brotherhood and the defendant Railroad Company, and as such separate class or craft these petitioners contend that they have, by a majority vote, the right to determine who, if any one, may be their representative for the purpose of collective bargaining with their employer.

As supporting the petitioners' contention with respect to their petition to be allowed to intervene and to assert such rights as they may have, the attention of the Court is respectfully called to the following cases:

Brotherhood of Railway and Steamship Clerks, etc., vs. N. C. and St. L. & R. Company, 94 Fed. (2d) 97. (The National Mediation Board was not a party to this suit.)
McNulty vs. National Mediation Board, et al, 18 Fed. Sup. 494.
Ducan Townsite Co. vs. Lane, 245 U. S. 310.
Virginia Railroad Co. vs. System Federation, 300 U. S. 515.
Order of Railway Conductors of America vs. National Mediation Board, 113 Fed. (2d) 531.

and numerous cases cited in the above authorities.

Title 45, U. S. C. A., Section 152, Sub-section 4, reads as follows:

"The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purpose of this chapter."

The petitioners herein contend that they are a separate class or craft and have always been so recognized, both by

the Brotherhood and by the Railroad Company, and have had no oportunity to select a representative if they desired one. In the election held these petitioners, about 850 in number, were classed with another class or craft of more than 4,000 in number, who were at said time, by a prior election duly held, represented by the Brotherhood. It is the contention of the petitioners that at any such election only these petitioners should have been permitted to vote.

It is not disputed that the Brotherhood not only represented the larger class of clerical employees but was recognized as such representative, not only by the employees but by the Company, and there had been in force a contract between the Brotherhood and the Company that class of clerical workers since 1922, as amended from time to time, and there has never been any dispute about the Brotherhood's right to represent this group among the employees themselves, or between the Brotherhood and the Company. In this connection we respectfully call the Court's attention to 45 U. S. C. A. 152 (9th):

> "In such an investigation (as to who shall constitute the authorized bargaining agent of a class of employees), the Mediation Board shall be authorized to take a secret ballot of the *employees involved.*"

From what has heretofore been said it would seem quite obvious that the only *employees involved* were the 850 employees, whom the Brotherhood did not represent and whom it sought to represent over their objection.

Further in said Act, 45 U. S. C. A. 152 (9th), appears the following:

> "It shall be the duty of the Mediation Board, upon request of either party to the dispute, to investigate such dispute and to certify to *both* parties in writing, within 30 days after the receipt of the invocation of its services, the name or names of the individuals or organizations that have been designated and authorized to represent the *employees involved* in the dispute, and certify the same to the carrier."

From the foregoing language of the statute it would appear that the Mediation Board is required to give notice to both parties, one of which was the group of 850 employees, the present petitioners, who were the only *employees involved*, and the only ones who never received any notice other than notices posted on bulletin boards to the effect that an election would be conducted.

These petitioners submit that any dispute with regards to who should or should not be represented by the Brotherhood was initiated by the Brotherhood without consulting or notifying these petitioners, or any of them, nor was there any hearing conducted by the National Mediation Board as required by Title 45, U. S. C. A., Section 152, at which these petitioners or any of them were heard, nor did they have notice of, nor were they given any opportunity to protest the designation of employees, who should participate in the election, or to protest the classing of petitioners, numbering 850, with the class represented by the plaintiff Brotherhood numbering more than 4,000. Furthermore, these petitioners contend and submit that even if they alone had been declared eligible to vote in said election, the ballot submitted was so framed that neither as a group nor individually could they have expressed their wishes. The ballot used was in the following form:

Mark an "X" in the Square of Your Choice

If you desire to be represented by The Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes, Mark an "X" in this square ..... ☐

If you desire to be represented by any other Organization or Individual, write the name of such on this line

.....

Mark an "X" in this square..... ☐

App. Page 15.

The form of the ballot was such that these petitioners would have been required to have voted either that they desired to be represented by the Plaintiff Brotherhood, which they do not, or by some other organization or individual, which they do not. In other words, they were merely given a preference as between the plaintiff Brotherhood or some other organization or individual, whose name had to be filled in on the ballot, otherwise the ballot would be marked void. These petitioners never at any time were given the opportunity at the election to express their preference or vote their convictions but were absorbed into a larger craft or class, notwithstanding the fact that they had been a separate class or craft for many years and so recognized by the Brotherhood.

The respondent, Brotherhood, seems to rely in support of its position, at least in part, upon the ground that the Mediation Board was not made a party in the petitioners' motion to intervene. The petitioners asked leave to intervene in a suit pending between the Brotherhood, plaintiff, and the Atlantic Coast Line Railroad Company, defendant, and so filed as to both the plaintiff Brotherhood and the defendant Railroad Company in the main action. It seems unnecessary in this situation to ask that the Mediation Board be made a party but if thought proper or necessary by the Court, this could easily be accomplished.

The appellee's, Brotherhood's, main reliance, however, appears to be the decision in the case of Switchmen's Union of North America v. National Mediation Board, 320 U. S. 297. The District Court and Court of Appeals both denied the petitioners' application for intervention on the grounds that the Switchmen's Union case forbade it, whereas the Court had clearly and plainly stated in the Switchmen's Union decision that this Court was not deciding whether or not a group such as the petitioners could intervene in an action brought to enforce a certificate issued by the National Mediation Board, so

that although this Court may eventually reach the conclusion that the petitioners should not intervene, or that having intervened, they were not entitled to the relief demanded, the Switchmen's Union case is no authority for that proposition. Both the District Court and the Court of Appeals, we submit, have reached their results upon an improper interpretation of the Switchmen's Union decision.

We respectfully call the court's attention to the concluding paragraph of the main opinion in the Switchmen's case *supra* at page 67:

> "What is open when a court of equity is asked for its affirmative help by granting a decree for the enforcement of a certificate of the Mediation Board under Section 2(9th) raises questions not now before us?"

The question which is presented for the decision of this court is whether or not a labor organization which, under the Railway Labor Act occupies such a high position of trust that it has been declared to be a fiduciary, may, by its own motion seek and obtain the right to represent a class or craft over the objection of an overwhelming majority of that craft or class. When such a result is accomplished by a "Gerrymandered" election, in which is included a much larger craft or class admittedly represented by the Brotherhood, it seems quite accurate to say that the agent has become the principal and the servant has become the master. No longer would the employees be entitled to organize collectively and select representatives of their own choosing. Instead the representative chooses the employees whom he seeks to represent, and imposes upon them his own will. This is indeed a far cry from the purpose for which the Railway Labor Act was enacted.

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Dated July 31, 1950.

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No. 340

IN THE

Supreme Court of the United States

October Term, 1950

J. E. Ross, Jr., a Clerk in the Transportation Department, et al., *Petitioners*,

v.

Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, et al., *Respondents*.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit.

BRIEF FOR RESPONDENTS IN OPPOSITION OTHER THAN ATLANTIC COAST LINE RAILROAD COMPANY.

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Dated: September 13, 1950.

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IN THE

Supreme Court of the United States

October Term, 1950

No. 240

J. E. Rose, Jr., a Clerk in the Transportation Department, et al., *Petitioners,*

v.

Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, et al., *Respondents.*

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit.

BRIEF FOR RESPONDENTS IN OPPOSITION OTHER THAN ATLANTIC COAST LINE RAILROAD COMPANY.

OPINIONS BELOW.

The opinion of the District Court (R. 27-36) is reported at 88 F. Supp. 115. The opinion of the United States Court of Appeals for the Fourth Circuit (R. 38-43) is reported at 181 F. (2d) 944.

JURISDICTION.

Petitioners invoke the jurisdiction of this Court under 28 U. S. C., Sec. 1254 (1).

QUESTION PRESENTED.

Is a petition to intervene as a matter of right in an action to compel collective bargaining under the Railway Labor Act properly denied where the ground on which intervention is based and the purpose for which it is sought require judicial review of a craft or class determination of the National Mediation Board issued pursuant to Section 2, Ninth of the Railway Labor Act?

STATUTE INVOLVED.

The pertinent provisions of the Railway Labor Act (45 U. S. C., Sec. 151 et seq.) are as follows:

> "Sec. 2. Fourth. . . . The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this Act. . . .
>
> "Ninth. If any dispute shall arise among a carrier's employees as to who are the representatives of such employees designated and authorized in accordance with the requirements of this Act, it shall be the duty of the Mediation Board, upon request of either party to the dispute, to investigate such dispute and to certify to both parties, in writing, within thirty days after the receipt of the invocation of its services, the name or names of the individuals or organizations that have been designated and authorized to represent the employees involved in the dispute, and certify the same to the carrier. Upon receipt of such certification the carrier shall treat with the representative so certified as the representative of the craft or class for the purposes of this Act. In such an investigation, the Mediation Board shall be authorized to take a secret ballot of the employees involved, or to utilize any other appropriate method of ascertaining the names of their duly designated and authorized representatives in such manner

as shall insure the choice of representatives by the employees without interference, influence, or coercion exercised by the carrier. In the conduct of any election for the purposes herein indicated the Board shall designate who may participate in the election and establish the rules to govern the election, or may appoint a committee of three neutral persons who after hearing shall within ten days designate the employees who may participate in the election. The Board shall have access to and have power to make copies of the books and records of the carriers to obtain and utilize such information as may be deemed necessary by it to carry out the purposes and provisions of this paragraph."

STATEMENT.

Certain conclusions, purporting to be statements of fact, are interspersed throughout the Petition and supporting brief which are not supported or justified by the record. Conceivably, these statements might create an erroneous impression of the actual facts of record upon which the issue below was resolved. For this reason, respondents believe that brief comment on these extraneous statements by petitioners is necessary.

In their "Statement of Matter Involved" and throughout their supporting brief, petitioners refer to themselves and other employees occupying the so-called "excepted" positions, whom petitioners purport to represent, as constituting a separate "craft or class" of employees. Such assertion has no basis in fact beyond the mere claim of petitioners that the employees in question *should* constitute a separate craft or class. It simply represents petitioners' contention with respect to the ultimate factual determination which the courts below held to be non-justiciable for the reason that it was a matter exclusively and finally within the jurisdiction of the National Mediation Board.

There is no support in the record for petitioners' repeated statements that these "excepted" employees have been recognized in contracts between the Brotherhood of Rail-

way and Steamship Clerks[1] and the Railroad Company as constituting a separate craft or class, or that they were excepted from the operation of such contracts because they were not within the craft or class for which the Brotherhood was and is the statutory bargaining representative. The contracts did not except them "as a craft or class." They simply specified, under the heading "Exceptions," that "These rules shall not apply to the following: . . ." (R. 17), after which the employees, so excepted from the provisions of the agreement with respect to wages, rules, and working conditions, were listed where necessary to properly identify them. (R. 17-24.)

There is no indication in the record that the carrier itself has ever predicated its unwillingness to apply the standard wages, rules, and working conditions to these employees on any claim that they were a separate craft or class. On the contrary, the carrier's Answer to the Complaint filed in this case alleges, as the basic defense to the action, that the carrier did in fact bargain in good faith with respondent Brotherhood on many occasions with respect to these employees and the establishment of wages, rules and working conditions applicable to their employment. (R. 5-11.) Thus, in the face of this averment by the carrier itself and in view of the entire record below certified to this Court (R. 45-46), petitioners' assertion that since 1921 the employees in question have been recognized by the Brotherhood and the Railroad Company as a separate craft or class simply is not true.

Although it sufficiently appears elsewhere in their Petition and supporting brief, petitioners neglected to mention in their "Statement of Matter Involved" that following an investigation and election conducted by the National Mediation Board respondent Brotherhood was certified by the Board as the representative of the craft or class of clerical, office, station and storehouse employees of the carrier, and that such certification covered the "excepted" employees

[1] Herein referred to as the Brotherhood.

whom petitioners purport to represent. (R. 3, 4, 10, 14 and 15.)

ARGUMENT.

I.

The Question of Federal Law Here Involved Has Been Well Settled by This Court.

Petitioners contend that the court of appeals below has decided an important question of federal law which has not been, but should be settled by this Court.[2] On the contrary, as is immediately apparent from a reading of the opinion of the court of appeals below (R. 38-43), the question of federal law here involved has not only been decided by this Court but is also so well settled that the Petition is clearly without substance and presents no proper basis for review on certiorari.

Petitioner's entire argument is premised on a totally unwarranted misstatement of fact that they are part of a group which constitutes a separate craft or class of employees. Such is not the fact as we have already shown by reference to the record in our Statement, *supra*. Furthermore, the opinion of the court below clearly states that the fact that these employees have been determined by the Mediation Board to be a part of the group of employees represented by the Brotherhood is not even in dispute (R. 39). Thus, petitioners' assumed premise actually represents

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[2] The second reason relied upon by petitioners for the granting of the writ (Pet., p. 5) is, by petitioner's own admission, dependent upon a showing that they have a legal right to court review of craft or class determinations of the Mediation Board. Neither before the court of appeals below nor in their Petition to this court have petitioners disputed the proposition that unless they have a justiciable interest to assert, denial of intervention by the District Court was proper. It would be purposeless, of course, for a court to permit intervention upon the basis of a pleading setting forth an alleged claim as to which the court had no jurisdiction.

their ultimate contention of what the court should decide if they were permitted to intervene.

Accordingly, the real question presented for review is whether the court of appeals below correctly held that the determination of bargaining units and the classification of employees for the purposes of bargaining under Section 2, Ninth of the Railway Labor Act (45 U. S. C. § 152 Ninth) are within the exclusive jurisdiction of the National Mediation Board and are not subject to review by the courts.

In 1943 this Court held that the Mediation Board has the exclusive jurisdiction, not subject to review by the courts, not only to resolve controversies concerning who shall be the representative of a craft or class of employees under the Railway Labor Act, but also "as an incident thereto to determine what is the appropriate craft or class in which the election should be held." *Switchmen's Union of North America, et al.* v. *National Mediation Board,* 320 U. S. 297, 300-301.

Shortly thereafter, this Court, in *Brotherhood of Railway & Steamship Clerks* v. *United Transport Service Employees,* 320 U. S. 715, not only reaffirmed its holding in the *Switchmen's* case that the courts lack jurisdiction to review administrative action of the Mediation Board pursuant to Section 2, Ninth of the Railway Labor Act, but did so in a case where the United States Court of Appeals for the District of Columbia had held the action of the Board to be clearly arbitrary.

In deciding *Steele* v. *L. & N. R. Co.,* 323 U. S. 192, which involved the issue of a bargaining representative's obligations under the Railway Labor Act, this Court reiterated and emphasized its holding in the *Switchmen's* case. It carefully distinguished the existence of jurisdiction in the courts to remedy a breach of a statutory obligation to represent all employees in a craft or class without discrimination because of race or color, from the lack of jurisdiction in the courts to review the administrative proceedings of the Mediation Board which result in certification of bar-

gaining representatives.[3] In so holding, the Court not only expressly included craft determinations of the Board, but also specifically acknowledged the Board's exclusive jurisdiction to determine what employees are properly included within a craft or class. On this point, which is the precise administrative action here sought to be reviewed, this Court said (p. 204):

> "... There is no question here of who is entitled to represent the craft, or who are members of it, issues which have been relegated for settlement to the Mediation Board, *Switchmen's Union* v. *National Mediation Board, supra*; *General Committee* v. *M.-K.-T. R. Co., supra.*"

Moreover, in 1948 the Court was petitioned to review its holding in the *Switchmen's* case on the ground that Section 10 of the Administrative Procedure Act provided judicial review for administrative proceedings of the Mediation Board under Section 2, Ninth of the Railway Labor Act. This Court denied certiorari. *Kirkland* v. *Atlantic Coast Line R. R. Co.*, 335 U. S. 843.[4]

Yet, in the face of the foregoing clearly established and well settled denial of jurisdiction by this Court to review administrative action of the Mediation Board under Section 2, Ninth of the Railway Labor Act, petitioners in effect ask the Court to pass upon the question of whether they can do indirectly what the Court has already held cannot be done directly. No apparent reason is advanced in the Petition as to why such an anomalous request should be granted. Petitioners simply disregard the holding of the *Switchmen's* case, as well as the fact that the lower federal courts

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[3] *Cf. United Transport Serv.* v. *National Mediation Board*, 179 F. 2d 446, 451 (App. D. C.).

[4] The opinion below of the United States Court of Appeals for the District of Columbia, which denied jurisdiction on the authority of the *Switchmen's* case to review administrative action of the Mediation Board under Section 2, Ninth of the Railway Labor Act, is reported at 167 F. 2d 529.

without exception have uniformly applied the jurisdictional holding there established ever since,[5] and rely upon lower court decisions which were all decided prior to the *Switchmen's* case, and which of course are now inapplicable. In citing these cases, they take the position that the *Switchmen's* decision is not controlling in the present case because of an observation in the Court's opinion that "What is open when a court of equity is asked for its affirmative help by granting a decree for the enforcement of a certificate of the Mediation Board under Section 2, Ninth raises questions not now before us."[6] The short reply to such a contention is convincingly provided by Judge Parker speaking for the Court of Appeals below where the identical contention was made. He said (R. 42):

> "It is perfectly clear from what is said elsewhere in that opinion and in the other cases cited, however, that one of the matters not left open to the court is to review the discretion of the Board in the determination of the bargaining unit. . . ."[7]

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[5] *United Transport Service Employes* v. *National Mediation Board*, 141 F. (2d) 724; *National Federation of Railway Workers* v. *National Mediation Board*, 141 F. (2d) 725; *Kirkland, et al.* v. *Atlantic Coast Line R. Co., et al.*, 167 F. (2d) 529, cert. den. 335 U. S. 843; *United Transport Serv.* v. *National Mediation Board, et al.*, 179 F. (2d) 446; *Radio Officers' Union* v. *National Mediation Board*, 181 F. (2d) 801.

In *United Transport Serv.* v. *National Mediation Board, et al., supra*, the court, as in the instant case, specifically held that a *craft or class determination* of the Mediation Board was not within the jurisdiction of the courts to review (179 F. 2d 446, 449-450).

[6] 320 U. S. 297, 307.

[7] Judge Parker also cited, as further evidence of the correctness of the answer given by the court below, this Court's opinion in *Order of Conductors* v. *Penn. R. Co.*, 323 U. S. 166, wherein relief similar to that here sought by petitioners, if permitted to intervene, was denied in the following language (p. 171):

> "The sixth, seventh, and eighth prayers have a similar object. They ask an injunction to prevent the railroad from

II.

The Decision Below is Clearly Correct.

Respondents urge denial of the Petition for the further reason that the decision of the court of appeals is manifestly correct. There can be no serious dispute of the correctness of the lower court's holding, on the basis of decisions of this Court, that determinations of bargaining units and classification of employees for the purposes of bargaining are within the exclusive jurisdiction of the Mediation Board and not subject to review by the courts (R. 40). Likewise, as stated by the court of appeals, whatever this Court intended by the reservation clause in the *Switchmen's* opinion to leave open for review by the courts in an action to compel collective bargaining, it is perfectly clear from what is said elsewhere in the *Switchmen's* opinion and in subsequent decisions of this Court "that one of the matters not left open to the court is to review the discretion of the Board in the determination of the bargaining unit." (R. 42.)

CONCLUSION.

In view of the fact that this case does not involve an important federal question which has not been decided by this Court, but on the contrary presents for review a question which is well settled by decisions of this Court upon which the court of appeals below relied, it is respectfully sub-

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bargaining with trainmen and a mandatory injunction that it shall bargain with the plaintiff as representative of road conductors. Such a decree would be in the teeth of the Board's certification. To grant such a decree would seem to be in contravention of the Switchmen's Union of N. A. Case, 320 U. S. 297, supra, and in any event such action should not be taken in the absence of the Board."

mitted that the petition for a writ of certiorari should be denied.

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